

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No 6132, 6705 and 6998 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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IQBALBHAI ILIASHBHAI SIDDI

Versus

COLLECTOR

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Appearance:

MR IS SEPIA for Petitioners

Mr To M Semper, AGP for Respondent No. 1

MR ANANT Se DAVE for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/10/97

ORAL JUDGEMENT

The petitioners in this group of Special Civil Applications were employees of respondent No.2-Radhanpur Municipality. They were initially appointed as daily wagers and then they are made permanent by Resolution dated 30.4.1994. The Collector, Plumper, exercising powers under section 258 of Gujarat Municipalities Act,

by order dated 21.9.1994, set aside the said Resolution. The order of the Collector was challenged before this Court in Special Civil Application No.11021/94. This Court, by judgment dated 7.6.1995, allowed the Special Civil Application on the short ground that the petitioners were not given a fair opportunity of hearing by the Collector. Thus the matter was remanded to the Collector. The Collector after hearing the petitioners, has passed a fresh order. In the view of the Collector, regularization is illegal for the reason that it has been done without proper sanction and grant from the appropriate authorities. The said order dated 14.7.97 has been challenged in the present group of Special Civil Applications.

2. Mr I S Supehia, learned Advocate appearing for the petitioner submits that once the Resolution has been acted upon, the Collector has no jurisdiction to exercise power under section 258. He relies on a Division Bench judgment of this Court, reported in the case of RAGHAVBHAI ARACHNOID v. AMRELI NAGARPALIKA, reported in 1994 (1) GLH 470. It has been brought to my notice by the learned AGP that on the same points, reference has been made to the Larger Bench. Be that as it may, I am not inclined to invoke the extra-ordinary powers of this Court under Article 226 of the Constitution of India for the reason that I am not satisfied that the Resolution of the respondent Municipality is legal. Mr Supehia has tried to read the Resolution and certain other materials to show that there are vacancies available and there is sufficient fund and therefore, the Municipality was competent to adopt the Resolution to regularise the petitioners. Having read the reasonings given by the Collector, it clearly appears that the Municipality is out and out to oblige the petitioners, even at the cost of the public interest and public funds. Thus, even if it is assumed that the impugned order of the Collector is not sustainable in law, in my view, it does not require to be disturbed. It is well established principle of law that if the consequences of setting aside an illegal order is to restore another illegal order, the High Court will not exercise its powers under Article 226 of the Constitution of India. Restoration of the order of Municipality will not only lead to regularising back door entry, but also serious financial consequences.

3. In view of the aforesaid, I refused to interfere with the impugned order of the collector. However, it will be open for respondent No.2-Radhanpur Municipality to take the matter to the Director, Municipality. In

case the Director, Municipality finds that the Resolution is in accordance with law and that it does not result into a back door entry or it does not cause unnecessary financial burden on the Municipality, clearance may be obtained. If such clearance is given by the Director, Municipality, it will be open for the petitioners to approach this Court.

In view of the aforesaid, this group of Special Civil Applications is rejected. Rule in each petitions discharged. Interim relief stands vacated.

14.10.97 ....

msp.